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Divorce: An American Tragedy

A radio discussion over WGN and the Mutual Broadcasting System

JULIUS H. MINER

Judge, Circuit Court of Cook County

DR. RUDOLPH G. NOVICK

Medical Director, Illinois Society for Mental Hygiene

ROBERT F. WINCH

Associate Professor of Sociology, Northwestern University

Moderator: JAMES H. McBURNEY

Dean, The School of Speech, Northwestern University

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Divorce: An American Tragedy

MR. MCBURNEY: This week and next the Reviewing Stand brings you a discussion of divorce; today, the nature and extent of the problem; next week, the means of control.

How do you regard the divorce problem, Judge Miner? In what sense is it a tragedy?

JUDGE MINER: I might best quote an official committee appointed by President Truman and headed by Mr. Eric Johnson, composed of 150 leading citizens of America, who have made a study of the problem. They said, and I quote:

Divorce Laws

"Our divorce laws are a mess. They are rotten. No language can be too strong. The lawyers and judges are bitter about their impotence under existing procedures. Social workers view the legalism and fiction of divorce with unconscionable scorn. The press and periodicals treat the divorce laws, including the decisions of the Supreme Court of the United States, with outspoken contempt."

MR. MCBURNEY: You subscribe to that statement?

JUDGE MINER: Fully.

MR. MCBURNEY: What is your position, Winch?

MR. WINCH: Divorce is a tragedy in the sense that it is a symptom of frustration, emotional difficulties and unhappiness. Divorce appears to be both a cause and an effect of frustration, emotional difficulties and unhappiness.

MR. MCBURNEY: Dr. Novick, how do you feel about it?

DR. NOVICK: It is a simple, well known, uncontradictable fact that our

growing divorce rate is a problem and a tragedy. That the problem is so large, however, or the tragedy so great, as official and unofficial attitudes and personal prejudices would make it appear to be, is questionable. The alarm and the tragedy with which the problem is viewed is engendered by many misconceptions such as: all marriages are for life; every divorce is an evidence of failure; there are no justifiable divorces; there is no solution to the problem; and others.

A scientific examination of these and many other misconceptions about divorce would enable us better to understand the problem, and to further existing and initiate new constructive measures which may lead not only to a lowering of the divorce rate but also to better ways of achieving those things which divorced people, consciously or unconsciously, seek, happiness, security, freedom from anxiety, and so forth.

Divorce Justifiable?

MR. MCBURNEY: You suggest, Doctor, that there are circumstances under which divorce is justifiable, that not all divorces are bad? What would some of those circumstances be?

DR. NOVICK: Certainly, divorce is not the solution to all problems, but there are circumstances under which divorce should be considered as a possible solution. For example, there might be personal clashes between the husband and wife which cannot be resolved, and there might be factors of emotional immaturity, neurotic conflicts, sexual maladjustments that cannot be resolved.

MR. MCBURNEY: You agree, Winch?

MR. WINCH: Yes, in general. It seems that we concede there are two broad

kinds of attitude toward divorce. There is the one kind of attitude that we might call "categorical morality," an attitude which says, "Yes, divorce is bad and that is all we can say." This is the sort of attitude which certain groups in the country take, particularly certain religious groups. And the alternate attitude is one that we might call "pragmatic morality." An attitude such as that would be concerned with not labeling the act itself as bad, but viewing, rather, the consequences of the act. We should then, operating on this principle, have to decide in each case whether it is more evil or less evil for the divorce to take place, an evil in terms of what it does to the various people concerned in the case.

Pragmatic Morality

MR. MCBURNEY: I take it that this concept of pragmatic morality is what the Doctor was developing here earlier.

MR. WINCH: I should gather that it was so, and ignoring the other concept.

JUDGE MINER: I agree with him, because we must take into consideration the fact that nature never intended to make us all perfect in health, in character, or in temperament.

The question before us now is at what stage of the game are we to recommend the divorce. There are millions of couples living who have never reached the divorce court, who have far more serious grounds than those who are there. And we ought to address ourselves primarily to the question of examining the field, exploring the situation, particularly where children are involved, to attempt to reconcile them and preserve the home. When they have reached the stage of hopelessness, then there is no alternative but to give them a divorce.

MR. WINCH: It seems to me that we are concerned today rather with what we view as the causes, the conditions under which divorce is generated, rather than when we should tell people to get a divorce.

In terms of the considerations which the Judge raises, we might note that today we are apparently less tolerant of various difficulties in the relationship between husband and wife than we were about 100 years or so ago. This is for a variety of reasons which we may or may not be able to go into this morning.

MR. MCBURNEY: Before we examine some of the causes of divorce I would like to ask the Judge here why he regards this problem with so much concern. You read a pretty strong statement at the opening. In what sense is divorce bad? What are the effects that worry you?

JUDGE MINER: It wasn't only my statement but the consensus of the American people. While I consider the problem of divorce between childless couples serious and worthy of consideration, in the final analysis it is their own problem; but where there are children involved it becomes the court's problem and society's problem. They have no lawyer in court. They become victims of the conclusions, premature, neurotic, bad judgment, of the parents, and they ultimately suffer to a tremendous degree.

'Children of Divorce'

For instance, I find that there are over 278,000 children annually orphaned by the divorce process. What becomes of them? They are the citizens of tomorrow. And the more tragic phase of it is that 80 per cent of the youngsters find themselves ultimately in the juvenile courts, many, many of whom I have disposed of in the Criminal Court and sent to penal institutions. They are our problem, society's problem, and unless we do something about them, America, as a nation, will suffer. That is probably one of the principal reasons why we are more lawless than any other nation in the world, because our divorce rate is much higher than that of any other nation and we feed those youngsters into the juvenile courts, into the Criminal Court. And more than that, they become financially dependent, in whole

or in part, upon the community. Here in Illinois alone the taxpayers are dishing out \$13 million annually to maintain those youngsters. Every state supports their youngsters in proportion. It runs into hundreds of millions of dollars, but more than that, it runs into a tremendous figure in the maintenance of penal institutions for these youngsters.

MR. WINCH: I should like to offer a statistical footnote to the Judge's comments. In 1948, which is the last year for which we have good data, there were 133,000 children under 21 who were affected by divorces. There were 421,000 divorces.

Another way of looking at it is that about three-fifths of the couples who were divorced had no minor children, but of those who had minor children there were 1.78 children per divorce.

'Example To Child'

DR. NOVICK: I would like to add to that. Every divorce sets an example for the child, and the child, when it grows up, will look to divorce as a solution to its marital problems rather than looking for other solutions. Thus, the divorce problem becomes important not only where there are children but also in instances where there aren't any children, because it adds to the total number of divorces. This reinforces the adolescent and childish idea that divorce is a solution, whereas in many instances there may be better solutions for the problem.

MR. MCBURNEY: The Judge is primarily concerned about the kind of divorce that breaks up a home where there are children. Do you go beyond that concern, Winch, in this problem?

MR. WINCH: In my opening remarks I indicated that divorce was a tragedy in terms of consequences. It seems that while we are concerned very much about the children, because in a divorce case relatively few others seem to be concerned about them, there is also the consideration of what happens to the husband and wife who are parted. Since it appears that husbands tend to remarry in greater

proportion than wives, it does appear then as a consequence that the wives are particularly disadvantaged, and especially, of course, those with children, in making another marriage.

MR. MCBURNEY: What is the effect of all of this on the family as a social institution in America?

DR. NOVICK: Certainly it is helping to promote the breakdown of the family. There are many other factors which promote that, but divorce certainly is an additional strain placed upon the family in helping to break it down.

MR. MCBURNEY: It has been suggested that the family as an institution is weakened, is breaking down. What is your line of reasoning for that, Winch?

'Change in Family Living'

MR. WINCH: It seems to me that when we compare the modern urban family with the family that we saw in this country perhaps a century ago, to take the most conspicuous, the kind of family on the homestead farm, in that situation it was up to the people to carve a living practically out of a wilderness. That meant husband and wife and children were dependent on each other for practically every human need. They would buy nails and perhaps saws but everything else they had to produce. Not only did they satisfy each other in terms of economic needs, through their labor, but what education went on was passed from generation to generation, and religious instruction likewise. Contrast that then with the situation we have today in the modern urban family, living in a money economy, any member of whom can have a job and need not be dependent on the family for any of his needs. He can buy almost anything he needs and get a more effectively produced and better article. That means then that we have reduced greatly the number of bonds between members of the family from education, religion, economy, and so on down, to the one remaining one, the principal one, that of affection and

emotional gratification. It means that we place a great deal of emphasis on this and when this hold falls apart, then the family unit falls apart.

DR. NOVICK: Yes, it is the emotional needs that I was going to stress. The family formerly supplied all the emotional needs for the child, whereas now the child, with the family breaking up, must find more and more satisfaction for its emotional needs in the community rather than in the family.

MR. WINCH: Yes, that is happening.

Economic Factor

JUDGE MINER: While I agree with both doctors from a psychological and psychiatric point of view, I disagree on one point, and that is the economic point. The average earning that I find in the divorce court is approximately \$40 take-home pay. And many of them run less than that. They have to meet every obligation with those few dollars. And then when they stop off at a tavern to buy a drink and spend \$2, when he places \$2 on a horse, when he gallivants, when he "meets the boys" and they gamble a bit, it is reflected in the ultimate pay envelope which deprives the children of a bottle of milk or a needed pair of shoes, or the landlord cannot receive his rent. Sixty or 65 per cent of those who come into court are not in the bracket you gentlemen are talking about. It is the laborer, the carpenter, the plumber, the white collar man, who comes into court. Those differences in the pay envelope ultimately result in argument, in quarrels, and they finally are named by the lawyers as cruelty, desertion, adultery, or whatever else the statute provides. But in the main, in those 60 or 65 per cent, the economic factor is the basic cause of it.

You mentioned a bit about the women being more independent as a result of the war. That too contributes. She is less apt to "take it" and she ultimately—particularly where there are no children involved—finds employment and becomes more independent than the husband. And even

where there is a child involved, she will leave the child with her mother or a sister and go out and help provide the necessities for the family. There is the principal reason. The man who earns ten or fifteen thousand a year and stops off at the club and gets drunk, in that family, it isn't "drunkenness" because he can afford it. And the wife "takes it." She can stand it.

MR. WINCH: We are concluding that there are no divorces at this level of ten or fifteen thousand dollars?

DR. NOVICK: Or they get the divorce in Reno.

JUDGE MINER: They get their divorce in Reno. They have time for pleasure. The woman who scrubs the floor and washes the diapers and looks after the children hasn't any time. With her it is purely a case of time for feeding the children . . .

DR. NOVICK: That is taking a materialistic viewpoint or philosophy of life.

Low Income Problem?

MR. MCBURNEY: Pardon me. I don't think that is a fair interpretation of what the Judge said. I don't think there is materialism in his point of view. What he is saying is that out of his experience in the divorce court, more often it is the people in the lower income brackets that get themselves in difficulties because they don't have the money. That doesn't make a materialist out of the Judge.

JUDGE MINER: I'd better illustrate that with a story. In the higher bracket the lawyer and his client walked out of my court room after I signed the decree for divorce. And as they walked out the lawyer said to her, "Now you have your divorce signed. How do you feel?" She said, "I feel like a new man." [Laughter]

DR. NOVICK: I think there is a deep psychological significance to that "I feel like a new man." Has the woman ever accepted her femininity? That was a Freudian slip of the tongue.

Her purpose was to deny her femininity.

JUDGE MINER: There isn't a decent mother in America who wouldn't lay down her life to save her children.

MR. MCBURNEY: The Judge, with that very good story, has moved into another area of analysis here. Winch suggested earlier that the breakdown in the home, in the family as an institution, is actually a contributing cause to the increased divorce rate. The Judge, of course, has emphasized this economic factor and is terribly concerned about divorce in the homes where there are children.

JUDGE MINER: May I add to that. When you sit there in court every morning and you hear mothers weeping for a few extra dollars because the children need an operation, over and above the allotment already decreed, then you know what I mean by saying that it is an economic problem.

'Emotional Maturity'

DR. NOVICK: I will agree, but when I sit there every morning and listen to my patients, whose parents never allowed them to grow up so they would become emotionally mature—yes, chronologically they are of age—then I might question whether some of these economic deficits in families, whether the economic deficiency in itself is not an evidence of an immature individual, for the individual who cannot ration his income so that he has money for that \$2 on the horse race and for the landlord, whether there isn't something lacking in those individuals. I think we must go beyond the economic difficulties, into the personalities of the individuals.

MR. WINCH: It seems we are getting into grave difficulties when we interpret income solely in psychological categories.

JUDGE MINER: I am for Dr. Novick's point of view. Many clients need treatment and not a divorce.

DR. NOVICK: I will agree to that.

MR. MCBURNEY: Winch emphasizes the breakdown of the family; the Judge has pursued the economic factor; and in many cases, the Doctor says it is a matter of mental maladjustment. Is that often a primary cause of divorce, do you think?

DR. NOVICK: I would say that in those instances where divorce is sought as a solution to the problem two, three, five, ten times, that we should be very suspicious of the emotional development or the degree of maturity which that individual has attained.

MR. MCBURNEY: Does that happen very often?

DR. NOVICK: It happens very frequently. If either the man or the woman has not attained that degree of emotional development and cannot find a solution in marriage, that marriage cannot succeed. That does not mean that every divorce is a result of neurosis. It does not mean that neurotic individuals cannot marry and make a go of it. If it so happens that both are emotionally immature and one complements the other they may make a very successful marriage.

'Responsibility'

MR. WINCH: Although we can't be sure what has happened over 100 years, I suspect that there probably hasn't been a great deal of change in the kind of personalities and character in our people, although the trend toward urbanization has no doubt affected it somewhat. I suspect, however, that 100 years ago people were much more tolerant of the foibles of their mates and were much more disposed to overlook them, and did not look to divorce as the necessary solution. They accepted marriage for life, and they did not have the expectation of a perpetually glamorous emotional life. There were so many bonds of responsibility between husband and wife, parents and children, that divorce just wasn't thinkable.

JUDGE MINER: Supplementing his remarks, in being in search of a mate, we think only in terms of *finding* the

right mate and we don't think in terms of *being* the right mate. It takes two of them to make that bargain. What Dr. Winch has said is true. We find more people in taverns on Sunday morning than we find in the churches.

MR. WINCH: I doubt it, but it may be true.

JUDGE MINER: I find these people in my court room.

MR. WINCH: Many states have a Sunday law.

'Learn to Sacrifice'

JUDGE MINER: They find their way. We think in terms of personal pleasure rather than thinking of our home and our children. Men go to the ball game and leave their babies behind. They go to play cards and leave the baby behind. They have never learned the real pleasure of romping with their children on the floor, taking them to the zoo, going to the park, and doing the things the baby desires. That is the happiness of a home, and many seem not to learn that, of *being* the right mate, of being kindly and considerate and thoughtful and compromising. The greatest word in the marital dictionary is "give and take," sacrifice and share.

DR. NOVICK: But we cannot *give* unless we *have received* as infants. We cannot *love* unless we *have been loved* as infants; so we get back to the infant and the child and his personal development which we have been talking about. Winch mentioned that in former days it was a matter of tolerance; in former days, too, it was the philosophy of society that one must—it may be bitter—but one must settle down in marriage. Now we are not willing to swallow that bitter pill of settling down. I am convinced we must seek, as Judge Miner put it, a sharing, not necessarily a 100 per cent agreement between the couples, but a sharing of pleasures as well as disappointments.

MR. MCBURNEY: Now we are beginning to talk about ways of handling

this problem, doing something about it. That is going to be our emphasis on our broadcast next week, but I would like to have your recommendations. I think you have analyzed the problem helpfully, but what is the answer to it? Judge, what would you do?

JUDGE MINER: The primary answer is that we must learn that love cannot be bludgeoned, but must be courted and won. That goes for children as well as for grownups. I have given this a great deal of consideration. I have been hurt physically and mentally by this three years of grind in the divorce court. I have come to the conclusion that one of the principal fields that we have not yet explored is the ease with which divorce suits are filed. Anyone can walk in and pay \$15 and institute a proceeding and that is the beginning of the battle. It is the calling of names under oath. He becomes an adulterer, a deserter, a cruel man. She becomes everything else under the sun. It is too tender a relationship to be exposed to public scorn. As long as the secret remains their own, within the confines of their own home, it is safe and it is often forgotten and compromised.

MR. MCBURNEY: What would you do about that?

'Cooling Off Period'

JUDGE MINER: I have recommended to our legislature, and they have passed it unanimously, a law which prevents the filing of a suit for divorce or separate maintenance for a period of 60 days. The party advancing the cause may come in without cost, with or without a lawyer, and file a declaration of intention, merely giving the names of the parties and the names and ages of the children.

DR. NOVICK: What would they do during those 60 days?

JUDGE MINER: That confidential card is impounded and turned over to the judge. No one has access to it. During those 60 days they may cool off themselves, but the judge himself can

lend the agency of the court, or psychiatric or psychological or other agencies, or whatever way is necessary, in the hope of bringing the couple to an understanding. It can't hurt any one. It can do a lot of good. I have experimented with this in my own court under the consent of my colleagues, and have found that 40 per cent of the 300 cases that I have handled have been reconciled and have gone home happily.

MR. MCBURNEY: Will you take a few sentences to give us your reaction to that, Winch?

MR. WINCH: It seems that it can do no harm and in many cases the people themselves might decide that they didn't want a divorce after they cooled off from their anger reaction.

DR. NOVICK: I think it is an excellent suggestion. I would go one step beyond that, doing something *before* the marriage to prepare people more adequately for marriage.

JUDGE MINER: I might add that this proposal of mine has the endorsement of every bar association, of every legal agency, and every law school.



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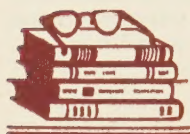
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BACAL, JAKUES, and SLOANE, LOUISE. *A.B.C. of Divorce*. New York, Dutton, 1947.

Includes: "Divorce; The Lonesome Road; Ways and Means of Dissolving Marriage; Who Gets What;" etc.

BERGLER, EDMUND. *Divorce Won't Help*. New York, Harper's, 1948.

A psychoanalyst discusses the problem of divorce.

GROVES, ERNEST RUTHERFORD. *Conserving Marriage and the Family; A Realistic Discussion of the Divorce Problem*. New York, Macmillan, 1944.

Written from the viewpoint of a "domestic counselor."

American Magazine 144:46-7+, O., '47. "New York's Perjury Mills; Divorce Courts." H. C. GREENBERG.

Justice Greenberg of New York State's Supreme Court exposes the "phony triangle" divorce cases passing through the New York divorce courts.

Annals of the American Academy of Political and Social Science 251:123-6, My., '47. "Reflections on the Law of the Family." H. S. DAGGETT.

Includes discussions on the grounds for divorce, fees, alimony, etc.

Atlantic Monthly 180:30-3, Ag., '47. "Are Americans Polygamous?" D. L. COHN. Same abridged with title "Marrying Is Not Marriage." *Reader's Digest* 51:71-3, N., '47.

Notes that while divorce may be "right" in a given case, it nonetheless indicates a serious breakdown in our society. Tells why American marriage has come to be such a "monumental failure."

Better Homes and Gardens 26:46+, D., '47. "Why Marriages Fail." S. G. KLING.

A divorce lawyer describes the grounds for divorce most often reported by husbands and wives.

Collier's 119:18-19+, My. 24, '47. "Husband Really Pays." R. S. BANAY.

Points out that although the husband is forced to accept the role of guilt in divorce, he may be scarred more deeply than the "traditionally suffering" wife.

Editorial Research Reports p. 83-99, F. 2, '49. "Marriage and Divorce." R. K. McNICKLE.

Contents: "Post War Trends in Marriage and Divorce; Legal Regulation

of Divorce in the United States; Efforts to Safeguard Marriage and the Family."

Forum 105:865-72, Je., '46. "Divorce in our Time." P. H. LANDIS.

Maintains that divorce is a part of the "individual-centered, companion-ship family."

Forum 104:97-102, O., '45. "Divorced in Reno but Not in New York." P. W. TAPPAN.

Describes the important Supreme Court decision in the case of Williams vs. North Carolina, and its effect on migratory divorces.

Illinois Law Review 43:464-94, S-O., '48 "Conciliation Rather Than Reconciliation." J. H. MINER.

Judge Miner discusses his recommendation for a required "cooling off" period in advance of the filing of a divorce complaint.

Journal of the American Judicature Society 30:180-6, Ap., '47. "National Tragedy of Divorce."

A general survey of divorce in America.

Ladies' Home Journal 65:296+, Ap., '48. "What Sends People to Reno?" J. F. BENDER.

Questions and answers.

Law and Contemporary Problems 10:697-866, Summer, '44.

Entire issue is devoted to a symposium on the subject "Children of Divorced Parents."

Life 26:124-6+, Ap. 11, '49. "Judge Hamill Hears a Divorce Case; Gladys and Ballard Turner." J. McCARTHY.

A vivid account of an authentic divorce case.

Saturday Evening Post 222:20-1+, Ja. 21; 22-3+, Ja. 28; 34-5+, F. 4; 32-3+, F. 11; 28+, F. 18, '50. "Post Reports on Divorce." D. G. WITTELS.

An expose of America's "biggest national scandal." Results of a survey based on 425 case histories.

Saturday Review of Literature 31:9-10+, N. 13, '48. "Romantic Route to Divorce." D. de ROUEMENT. (Translated by J. R. Loy.)
Discussion 31:23, N. 27; 23, D. 25, '48.

Denounces the attempt to base marriage upon romance, and tells why romance is, by its very nature, incompatible with marriage.

Science Digest 25:20-5, Mr., '49. "Marriage and Divorce in America." R. BENEDICT.

An anthropologist maintains that divorce is inevitable in a culture built on ever-expanding personal choice.

Survey 82:281-3, N., '46 "Romantic Illusion." P. H. LANDIS.

Stresses the importance of educating for marriage, and discusses various hazards of modern marriage.



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